United States Department of Labor Employees' Compensation Appeals Board

S.G., Appellant)
and) Docket No. 21-0642) Issued: September 22, 2021
DEPARTMENT OF THE ARMY, U.S. ARMY HEALTH CLINIC, Baumholder, Germany, Employer)
Appearances: Brett E. Blumstein, Esq., for the appellant 1	Case Submitted on the Record

ORDER REMANDING CASE

Office of Solicitor, for the Director

Before:

JANICE B. ASKIN, Judge PATRICIA H. FITZGERALD, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On March 18, 2021 appellant, through counsel, filed a timely appeal from a September 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0642.

On November 10, 2017 appellant, then a 71-year-old family advocacy program clinical social worker, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2017 he injured his back, neck, right wrist, left elbow and forearm, and both knees when the chair he attempted to get out of slipped out from under him causing him to fall backward while in the performance of duty. Appellant did not immediately stop work. By decision dated June 29, 2018, OWCP accepted that the November 9, 2017 employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

establish that a medical condition was diagnosed in connection with the accepted employment incident.

By decisions dated September 13, 2019 and September 21, 2020, OWCP denied modification of the June 29, 2018 decision. In both decisions, it referenced a prior claim, OWCP File No. xxxxxx626 that was accepted for unilateral primary osteoarthritis of the left knee, aggravation of unilateral primary osteoarthritis of the right knee, and medial meniscus tear of the left knee.² OWCP indicated that this file remains open and appellant continued to receive treatment including left knee replacement surgery and rehabilitation.

The Board has duly considered the matter and concludes that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.³ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁴ In the present claim, appellant alleged injuries to his knees. OWCP had previously accepted that he sustained unilateral primary osteoarthritis of the left knee, aggravation of unilateral primary osteoarthritis of the right knee, and medial meniscus tear of the left knee under OWCP File No. xxxxxxx626. However, it has not administratively combined the present claim with his previously accepted claim pertaining to his knees for which he continues to undergo treatment.

For a full and fair adjudication of appellant's current claim, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx068 and xxxxxx626.⁵ Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.⁶

² The Board notes that appellant filed a prior claim in OWCP File No. xxxxxx626 for a traumatic injury sustained on December 11, 2012 when he fell on ice while at work. OWCP granted appellant a schedule award for 50 percent permanent impairment of the left lower extremity and 59 percent permanent impairment of the right lower extremity.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*; *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

⁵ *Id*.

⁶ R.G., Docket No. 19-1755 (issued July 7, 2020); L.M., supra note 4.

IT IS HEREBY ORDERED THAT the September 21, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 22, 2021 Washington, DC

Janice B. Askin, Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board